

United States Senate

WASHINGTON, DC 20510

June 22, 2016

The Honorable Jacob J. Lew
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Sylvia Mathews Burwell
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Lew, Secretary Burwell, and Secretary Perez:

We are writing regarding the ongoing need to develop a permanent solution to allow graduate students at institutions of higher education to receive subsidized health insurance coverage. While we appreciate the temporary relief provided by the Internal Revenue Service (IRS) earlier this year, we remain concerned about language that could negatively affect the health insurance of thousands of graduate students across the country. IRS Notice 2016-17 allowed institutions to continue offering subsidized coverage for most graduate students in the 2016-2017 academic year, enabling many students to continue to receive health care coverage this year. However, it also reiterated an interpretation of the law that could jeopardize graduate students access to health coverage. Therefore, we urge you to reconsider this interpretation, and to issue final guidance clarifying that it is consistent with the Affordable Care Act (ACA) for universities to provide subsidized student health insurance coverage to their graduate students.

For years, major universities across the country have provided graduate students (and in some cases their partners and dependents) with subsidized student health insurance coverage as part of their graduate student packages. The ACA-compliant student health insurance plan (SHIP) coverage currently offered to undergraduate and graduate students through their universities provides broad comprehensive benefits with low premiums and out-of-pocket expenses. This subsidized coverage helps enhance access to graduate education by reducing its cost. It also advances a primary goal of the ACA, which is to ensure the widespread availability of affordable, quality health insurance coverage for all Americans.

In recognition of the value of such student health insurance coverage, the ACA explicitly protects the right of colleges and universities to continue offering SHIP coverage. In fact, HHS has previously drafted regulations governing SHIP coverage to protect the ability of institutions of higher education to offer student health plans. However, the Departments' February 2016 guidance concluded that the subsidized SHIP coverage for graduate students in particular is an impermissible "premium reduction arrangement" as part of an "employer payment plan."

This guidance relies upon IRS Notice 2013-54, which was intended to prevent employers from eluding the ACA's employer mandate. The resulting interpretation is inconsistent with the primary goal of the ACA to ensure the widespread availability of affordable, quality health insurance coverage. Such an interpretation contradicts the ACA's clear statutory language protecting student health insurance plans, and undermines efforts to enhance access to higher education as it will likely result in higher costs to graduate students.

Universities providing subsidized student health insurance coverage are not seeking to elude the ACA's employer shared responsibility requirements. Instead, these schools provide subsidized coverage to graduate students as they do to all other students. SHIP coverage is a form of scholarship aid provided to students enrolled in an academic program. This treatment of graduate students as "students" for health care purposes is consistent with IRS regulations implementing the Student FICA Exception. Under the Student FICA Exception, the IRS wisely recognized that it makes no sense for a student who is engaged in paid services that are "incident to and for the purposes of pursuing a course of study" to pay FICA taxes. Similarly, it makes no sense to penalize universities for offering students access to lower-cost, high-quality health coverage when it is provided while they are pursuing a course of study.

While we commend your Departments for providing temporary transition relief in the guidance, this guidance is based on an interpretation of the ACA that interferes with a university's ability to provide graduate students with ACA-compliant SHIP coverage, at little or no cost. Notwithstanding the provided temporary transition relief there remains an urgent need to resolve this issue expeditiously. Colleges and universities will be negotiating the terms and cost of their student health insurance coverage for academic year 2017-18 during this fall. Thousands of graduate students at campuses across the country could potentially be affected, costing students and schools millions of dollars.

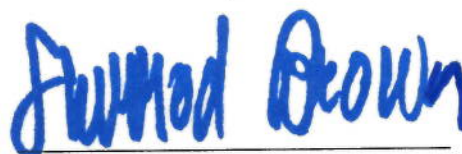
We urge you to reconsider this interpretation and to issue final guidance specifying that universities can continue to provide subsidized ACA compliant student health insurance coverage to their graduate students without penalty.

Thank you for your consideration of this important matter.



Charles E. Schumer
United States Senator

Sincerely,



Sherrod Brown
United States Senator



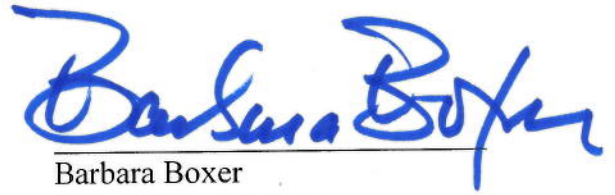
Robert P. Casey, Jr.
United States Senator



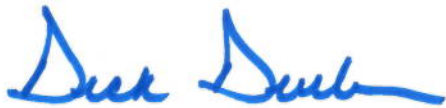
Debbie Stabenow
United States Senator



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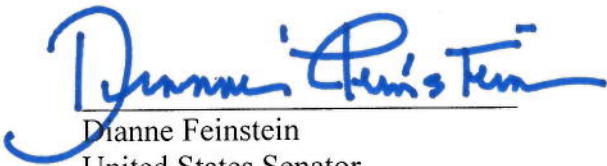
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United States Senator



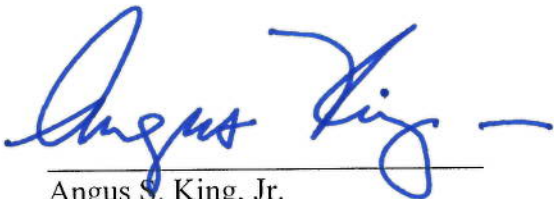
Kirsten Gillibrand
United States Senator



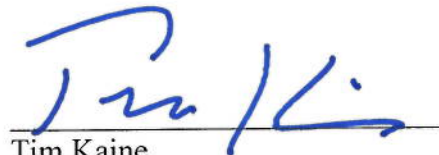
Dianne Feinstein
United States Senator



Joe Donnelly
United States Senator



Angus S. King, Jr.
United States Senator



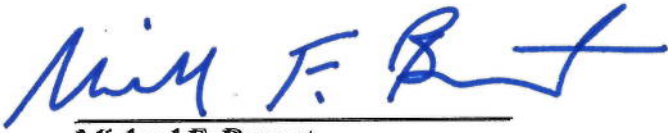
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